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7

8 **BEFORE THE**  
9 **BOARD OF ACCOUNTANCY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation) NO. AC-95-8  
Against: )  
12 )  
MARTIN L. WANDERS ) DEFAULT DECISION  
13 2250 North Broadway )  
Escondido, CA 92126 ) [Gov. Code §11520]  
14 )  
Certificate No. 15640 )  
15 )  
Respondent.)  
16 )

17 **FINDINGS OF FACT**

18 1. On or about December 21, 1994, Complainant Carol B.  
19 Sigmann, in her official capacity as Executive Officer of the Board  
20 of Accountancy, Department of Consumer Affairs, State of California  
21 ("Board"), filed Accusation No. AC-95-8 against Martin L. Wanders  
22 ("respondent").

23 2. On or about January 5, 1995, Janet M. Buna, an  
24 employee of the Office of the Attorney General, sent by certified  
25 mail a copy of Accusation No. AC-95-8, Statement to Respondent,  
26 Government Code sections 11507.5, 11507.6, and 11507.7, the Notice  
27 of Defense form, and a Request for Discovery, to respondent's

1 address of record with the Board which was and is 2250 North  
2 Broadway, Escondido, CA 92126. On or about January 26, 1995, the  
3 aforementioned documents were returned to the Office of the  
4 Attorney General marked "Unclaimed" by the U.S. Postal Service.  
5 The above-described service was effective as a matter of law  
6 pursuant to the provisions of California Government Code section  
7 11505, subdivision (c).

8 3. On or about August 7, 1970, the Board issued  
9 Certificate No. 15640 to respondent. The certificate expired on  
10 September 1, 1991, and has not been renewed.

11 4. California Business and Professions Code section 118  
12 provides, in pertinent part:

13 "(b) The suspension, expiration, or forfeiture by  
14 operation of law of a license issued by a board in the  
15 department, or its suspension, forfeiture, or cancellation by  
16 order of the board or by order of a court of law, or its  
17 surrender without the written consent of the board, shall not,  
18 during any period in which it may be renewed, restored,  
19 reissued, or reinstated, deprive the board of its authority to  
20 institute or continue a disciplinary proceeding against the  
21 licensee upon any ground provided by law or to enter an order  
22 suspending or revoking the license or otherwise taking  
23 disciplinary action against the license on any such ground."

24 5. California Government Code section 11506 provides, in  
25 pertinent part:

26 "(b) The respondent shall be entitled to a hearing on the  
27 merit if he files a notice of defense, and any such notice

1 shall be deemed a specific denial of all parts of the  
2 accusation not expressly admitted. Failure to file such  
3 notice shall constitute a waiver of respondent's right to a  
4 hearing, but the agency in its discretion may nevertheless  
5 grant a hearing. ...."

6 6. Respondent failed to file a Notice of Defense within  
7 15 days after service upon him of the Accusation and therefore  
8 waived his right to a hearing on the merits of Accusation No. AC-  
9 95-8.

10 7. California Government Code section 11520 provides, in  
11 pertinent part:

12 "(a) If the respondent fails to file a notice of defense  
13 or to appear at the hearing, the agency may take action based  
14 upon the respondent's express admissions or upon other  
15 evidence and affidavits may be used as evidence without any  
16 notice to respondent; ...."

17 8. The Board of Accountancy, Department of Consumer  
18 Affairs, State of California is authorized to revoke respondent's  
19 certificate pursuant to the following provisions of the California  
20 Business and Professions Code:

21 a. Section 5100 provides that the Board may revoke,  
22 suspend or refuse to renew any permit or certificate issued by  
23 the Board, or may censure the holder of any such permit or  
24 certificate.

25 b. Section 5107 provides, in part, that the Board may  
26 request the administrative law judge, as part of the proposed  
27 decision in a disciplinary proceeding, to direct any holder of

1 a permit or certificate found in violation of section 5100  
2 (a), (b), (c), (h), (i) or (j), to pay to the Board all  
3 reasonable costs of investigation and prosecution of the case,  
4 including, but not limited to, attorney's fees.

5 9. Pursuant to its authority under Government Code  
6 section 11520, and based on the evidence before it, the Board finds  
7 that the allegations, and each of them, contained in the Accusation  
8 No. AC-95-8 are true.

9 **DETERMINATION OF ISSUES**

10 1. Respondent is subject to disciplinary action pursuant  
11 to section 5100 of the California Business and Professions Code by  
12 reason of the Finding of Facts numbers 1 through 9, above.

13 **ORDER OF THE BOARD**

14 Certificate No. 15640 heretofore issued to respondent  
15 Martin L. Wanders, is hereby revoked. An effective date  
16 of August 6, 1995, has been assigned to this Order.

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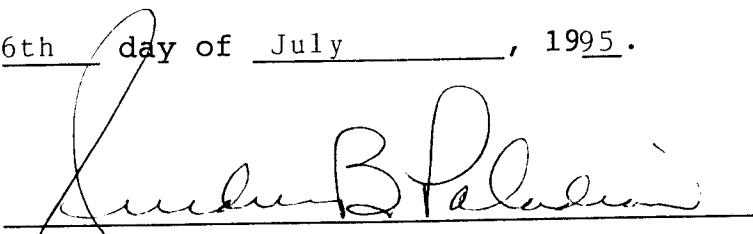
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1 Pursuant to California Government Code section 11520,  
2 subdivision (b), respondent is entitled to make any showing by way  
3 of mitigation; however, such showing must be made in writing to the  
4 Board of Accountancy, 2000 Evergreen Street, Ste 250, Sacramento,  
5 California 95815, prior to the effective date of this decision.

6 Made this 6th day of July, 1995.

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10 FOR THE BOARD OF ACCOUNTANCY

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13 2250 North Broadway )  
Escondido, CA 92026 )  
14 )  
Certificate No. 15640 )  
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Respondent. )  
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17 Complainant Carol B. Sigmann, as cause for disciplinary  
18 action, alleges:

19 **PARTIES**

20 1. Complainant is the Executive Officer of the  
21 California State Board of Accountancy ("Board") and makes and  
22 files this accusation solely in her official capacity.

23 License Status

24 2. On or about August 7, 1970, the Board issued  
25 Certificate No. 15640 (Certified Public Accountant) to Martin L.  
26 Wanders ("respondent"). The certificate expired on September 1,  
27 1991, and has not been renewed.

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1 e. Section 5100(h) provides that unprofessional  
2 conduct includes, but is not limited to, fiscal dishonesty  
3 or breach of fiduciary responsibility of any kind.

4 f. Section 5037(b) provides, in part, that a  
5 licensee shall furnish to his client or former client, upon  
6 request and reasonable notice:

7 "(1) A copy of the licensee's working papers, to  
8 the extent that those working papers include records  
9 that would ordinarily constitute part of the client's  
10 records and are not otherwise available to the client.

11 (2) Any accounting or other records belonging to,  
12 or obtained from or on behalf of, the client which the  
13 licensee removed from the client's premises or received  
14 for the client's account. The licensee may make and  
15 retain copies of documents of the client when they form  
16 the basis for work done by him or her."

17 g. Section 5050 provides, in part, that no person  
18 shall engage in the practice of public accountancy in  
19 California without a valid permit to practice public  
20 accountancy issued by the Board.

21 h. Section 5055 provides, in part, that only a  
22 person who holds a valid permit to practice as a certified  
23 public accountant issued by the Board is permitted to use  
24 the titles "C.P.A." or "certified public accountant."

25 i. Section 5070.6 provides, in part, that an  
26 expired permit may be renewed at any time within five years  
27 after its expiration.



1           j. Section 118(b) provides that the "suspension,  
2       expiration, or forfeiture by operation of law of a license  
3       issued by a board in the department, or its suspension,  
4       forfeiture, or cancellation by order of the board or by  
5       order of a court of law, or its surrender without the  
6       written consent of the board, shall not, during any period  
7       in which it may be renewed, restored, reissued, or  
8       reinstated, deprive the board of its authority to institute  
9       or continue a disciplinary proceeding against the licensee  
10      upon any ground provided by law or to enter an order  
11      suspending or revoking the license or otherwise taking  
12      disciplinary action against the licensee on any such  
13      ground."

14           4. This accusation is made in reference to the  
15      following regulations of the California Code of Regulations  
16      ("CCR"), title 16:

17           a. Section 68 provides that:

18               "A licensee of the board, after demand by or on  
19      behalf of a client, for books, records or other data,  
20      whether in written or machine sensible form, that are  
21      the client's records shall not retain such records.  
22      Unpaid fees do not constitute justification for  
23      retention of client records.

24           Although, in general the accountant's working  
25      papers are the property of the licensee, if such  
26      working papers include records which would ordinarily  
27      constitute part of the client's books and records and

are not otherwise available to the client, then the information on those working papers must be treated the same as if it were part of the client's books and records."

b. Section 87 provides, in part, that a licensee shall not engage in public practice unless the licensee has complied with the Board's continuing education requirements.

c. Section 94 provides, in part, that failure to comply with continuing education rules constitutes cause for discipline under Code section 5100.

#### CHARGES AND ALLEGATIONS

5. Respondent Martin L. Wanders is subject to disciplinary action based on the following:

a. On or about September 1, 1991, respondent's certificate number 15640 expired for failure by respondent to pay renewal fees or comply with continuing education requirements. Thereafter, until at least in or about 1993, respondent continued to hold himself out and practice as an accountant despite the fact that his certificate had expired.

b. In or about 1993, respondent contracted to prepare income tax returns for Clark and Sharon Quisenberry for 1992. To facilitate respondent's work, the clients gave respondent original documents and tax records for 1992. Respondent failed to prepare the income tax returns and failed to return the original records to the clients.

///

1           c. In or about 1993, respondent contracted to  
2 prepare income tax returns for Stephen and Brenda Eckburg  
3 for 1992. To facilitate respondent's work, the clients gave  
4 respondent original documents and tax records for 1992.  
5 Respondent failed to prepare the income tax returns and  
6 failed to return the original records to the clients.

7           d. In or about 1993, respondent failed to return  
8 original records belonging to Mary J. Merryman, the George  
9 H. Merryman Trust, and the Mary J. Merryman Living Trust,  
10 and abandoned work he was performing for or on behalf of  
11 those clients.

12           e. In or about 1993, respondent abandoned work he  
13 was performing for client Cynthia H. Hoefle and failed to  
14 return the client's original records.

15           f. In or about 1993, respondent abandoned work he  
16 was performing for client Ernest J. Allen and failed to  
17 return the client's original records.

18           g. In or about March 1994, respondent abandoned  
19 client files in his office when he was evicted from his  
20 office for non-payment of rent. Thereafter, in or about  
21 April 1994, respondent abandoned client files contained in a  
22 storage facility.

23           h. In or about 1993 or 1994, respondent abandoned  
24 his accounting practice, leaving the work he was performing  
25 for many clients incomplete and failing to return those  
26 clients' original records.

27 ///

1           6. Respondent's conduct, as more particularly set forth  
2 in paragraphs 5(b) - (h) above, constituted gross negligence in  
3 violation of Code section 5100(c) in that respondent abandoned  
4 his accounting practice without completing work he had contracted  
5 to perform for clients.

6           7. Respondent's conduct, as more particularly set forth  
7 in paragraphs 5(b) - (h) above, constituted breach of fiduciary  
8 duty in violation of Code section 5100(h) in that respondent  
9 abandoned his accounting practice without completing work he had  
10 contracted to perform for clients and failed to return his  
11 clients' records, despite numerous requests.

12           8. Respondent's conduct, as more particularly set forth  
13 in paragraphs 5(b) - (h) above, violated Code sections 5037(b),  
14 5100(f) and CCR section 68 in that respondent failed to return  
15 clients' original records after requests by or on behalf of the  
16 clients.

17           9. Respondent's conduct, as more particularly set forth  
18 in paragraph 5(a) above, violated Code sections 5050 and 5055 in  
19 that respondent continued to hold himself out and practice as a  
20 Certified Public Accountant after his certificate had expired.

21           10. Respondent's conduct, as more particularly set  
22 forth in paragraph 5(a) above, violated Code sections 5100(f) and  
23 CCR sections 87 and 94 in that respondent continued to practice  
24 accounting despite the fact that he had not complied with  
25 continuing education requirements.

26           11. Respondent's conduct, as more particularly set  
27 forth in paragraphs 5(a) - (h) above, constituted unprofessional

1 conduct in violation of Code section 5100 in that respondent  
2 abandoned his accounting practice without completing work he had  
3 contracted to perform for clients and failed to return his  
4 clients' records, despite numerous requests.

5 PRAYER

6 WHEREFORE, complainant requests that the Board hold a  
7 hearing on the matters alleged herein, and that following said  
8 hearing, the Board issue a decision:

- 9 1. Revoking or suspending Certificate Number 15640,  
10 heretofore issued to respondent;  
11 2. Directing respondent to pay to the Board a  
12 reasonable sum for its investigative and  
13 enforcement costs of this action; and  
14 3. Taking such other and further action as the Board  
15 deems appropriate to protect the public health,  
16 safety and welfare.

17  
18 DATED: December 21, 1994  
19

20 

21 Carol B. Sigmann  
22 Executive Officer  
23 Board of Accountancy  
24 Department of Consumer Affairs  
25 State of California

26 Complainant  
27

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